THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE G.BHAVANI PRASAD

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WRIT PETITION NOs.9459 and 9481 of 2004

13th September 2007

1. W.P.No.9459 of 2004

Between:

Jagruthi Foundation rep.by C.Shiva Rama Prasad.

...PETITIONER

AND

1. Govt.of Andhra Pradesh, rep.by its MRO, Serlingampally, R.R. District.

And one other.

...RESPONDENTS

2. W.P.No.9481 of 2004

Between:

K.Sabita, d/o.Madhav Reddy, R/o.H.No.38, Park View Enclave, Manovikas Nagar, Secunderabad.

...PETITIONER

AND

1. Govt.of Andhra Pradesh, rep.by its MRO, Serlingampally, R.R. District.

And one other.

...RESPONDENTS

THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE G.BHAVANI PRASAD

WRIT PETITION NOs.9459 and 9481 of 2004

COMMON ORDER: (Per the Hon'ble Mr Justice G.Bhavani Prasad)

Aggrieved by the judgment in L.G.C.No.101 of 1997 dated 24.03.2004, the second respondent therein filed W.P.No.9459 of 2004 and the tenth respondent therein filed W.P.No.9481 of 2004.

The facts leading to the Writ Petitions are that the Special Court under the A.P.Land Grabbing (Prohibition) Act, Hyderabad took *suo motu* cognizance of a news item published in "Vaartha" Telugu Daily News Paper, Hyderabad edition dated 20.08.1997 in L.G.C.No.101 of 1997 and called for the report of the Mandal Revenue Officer, Serlingampally in respect of Acs.2.06 gts in Survey No.55 of Khanamet Village. On receiving the report of the Mandal Revenue Officer in Form No.I, a due publication was made in the Gazette and the case of the State was that out of Acs.7.06 gts in Survey No.55 of

Khanamet village, Acs.5.00 was assigned to one Gangula Sandaiah in the year 1960 while Acs.2.06 gts of land was shown under 'Pote Kharab' column in the revenue records. From the year 1968-69, the entire Acs.7.06 gts of land was recorded as Patta land in the name of Gangula Sandaiah, the assignee in respect of Acs.5.00 only and taking advantage of the wrong entry in the revenue records, Gangula Sandaiah grabbed the land of Acs.2.06 gts and sold it to others including the land assigned to him and action under A.P. Assigned Lands (Prohibition of Transfer) Act, 1977 ('the Act' for brevity) has been initiated in respect of violation regarding Acs.5.00 and in respect of Acs.2.06 gts in Survey No.55, L.G.C.No.101 of 1997 was pursued against the respondents 1 to 12 claimed to be in possession.

While some of the respondents remained *ex parte*, the second respondent filed a counter contending that on the basis of the entries in the revenue records, respondents 2 and 3 purchased Ac.1.03 gts in survey No.55 from one G.Venkateshwarlu and others under a registered sale deed, who in turn purchased the said property from Gangula Sandaiah. The second respondent claimed that the area purchased by him was not part of the assigned land and there was no

material to show the location of the land in this survey number. The fourth respondent in the counter affidavit on behalf of the respondents 4, 6, 8 and 9 similarly claimed to be a purchaser of the property, which purchase was done after verification of the revenue records. The fifth respondent filed a separate counter raising similar contentions about the *bona fide* genuine purchase of the lands in their possession.

The Special Court framed appropriate issues on the facts in controversy including about the right and title to the land in question, any rights accrued by adverse possession and the involvement of any element of land grabbing.

The Mandal Revenue Officer and the Surveyor were examined as P.Ws.1 and 2 and R.Ws.1 to 3 were examined during the enquiry while Exs.A1 to A19 and Exs.B1 to B14 were marked.

The Special Court in the impugned judgment found that the application schedule land originally was a Government land and after excluding the land granted to Gangula Sandaiah by way of assignment, the remaining land still remained with the Government and as the respondents failed to prove their title by purchase or by adverse possession, they were concluded to be land grabbers. Respondents were also held not to be entitled to payment of any

compensation and were further held liable to be evicted from the petition schedule land. On the strength of the conclusion that the respondents have no valid title to the property, they were directed to vacate the possession within a period of two {2} months.

Aggrieved by the same, these two Writ Petitions were filed by the respondents 2 and 10 challenging the said judgment on various grounds, but mainly on the ground that the admitted facts cannot constitute any act of land grabbing justifying the invocation of the exclusive jurisdiction of the Special Court in the matter.

Sri M.V.S.Suresh Kumar, learned counsel for the writ petitioners strenuously contended that in the absence of any intention to grab any land for any of the respondents on the admitted facts placed before the Special Court, even by the Government, no act of land grabbing could have been presumed, while the learned Government Pleader defended the impugned judgment as based of cogent and convincing reasons bringing the question within the special jurisdiction. Learned counsel for the writ petitioners relied on certain precedents from the Apex Court and this Court, which will be referred to in due course.

The points that arise for consideration in these Writ Petitions are:

(1) whether on the admitted facts any of the respondents can be considered to be land grabbers within the meaning of the special statute and whether the Special Court can assume jurisdiction over the dispute? (2) To what relief?

Point No.1: The case was in fact taken cognizance *suo motu* on the news item published in "Vaartha" Telugu Daily News Paper dated 20.08.1997 and it was only at the instance of the Special Court, which called for a report that the Mandal Revenue Officer and through him, the State came up with the claim that Acs.7.06 gts of land in Survey No.55 at Khanmet village were illegally alienated by Gangula Sandaiah to others taking advantage of the assignment of Acs.5.00 in his favour. The very information furnished by the Mandal Revenue Officer on being called for by the Special Court itself referred to the petition schedule land of Acs.2.06 gts being shown as Pote Kharab in the pahanis for the year

1962-63, while from 1968-69, the entire extent of Acs.7.06 gts was recorded in the pahanis as the patta land of Gangula sandaiah. The very allegation of the Government was that Gangula Sandaiah took advantage of the wrong entry in the records in grabbing the petition schedule land of Acs.2.06 gts and sold the same to others. While the

extent of Acs.5.00 of the assigned land in the entire survey number is the subject matter of action under the Act and is not the subject matter of the present consideration, it is clear from the very facts stated in the concise statement set up by the Mandal Revenue Officer that none of the respondents were alleged to be responsible for the entries made in the revenue records and the consistent entries in the revenue records showing Gangula Sandaiah as pattedar of Acs.7.06 gts from 1967-68 up to the purchases between 1993-97 and even beyond till the cognizance of the land grabbing case in the year 1999, obviously led the respondents-purchasers to believe in the valid title and possession of Gangula Sandaiah of the said Acs.2.06 gts. There is no need to replicate the entire oral and documentary evidence produced. The registered sale deeds as well as the property tax receipts and the other documents marked as Exs.B1 to B14 and the entries in the pahanis, sethwar and the other documents marked as Exs.A1 to A19 are not in dispute. The evidence of the witnesses for the applicant and the respondents through P.Ws.1 and 2 and R.Ws.1 to 3 is a repetition of the facts and circumstances already stated above. On such facts, the only conclusion that can be arrived at is that Gangula Sandaiah,

shown as pattadar in respect of the petition schedule land of Acs.2.06 gts in survey No.55, was *bona fide* believed by the purchasers/respondents to be having the lawful entitlement and title to sell the same to them and deliver lawful possession and accordingly, the purchases by them were made and the enjoyment by them continued under the colour of a lawful title.

The precedential law on this aspect is that under such circumstances, the special jurisdiction under the A.P. Land Grabbing (Prohibition) Act, 1982 cannot be invoked.

In ***Gouni Satya Reddi v. Government of A.P.,***[1], the Apex Court was categorical more than once to say that the land grabber must be aware of the fact that he is entering into the possession illegally and without any lawful entitlement and if such elements are lacking or missing, it would not be a case of land grabbing. The Apex Court made it clear that the mere fact of not being lawfully entitled to enter into possession by itself would not lead to the inference of land grabbing unless possession is illegally taken with that view in mind and that it is a necessary ingredient of land grabbing that the person taking possession must know it that he is acting illegally while taking

possession. The Apex Court further made it clear that merely not being entitled to get possession itself was not a ground that the person would be a land grabber unless he illegally obtained possession. It was thus held that where such view of taking illegal possession is missing or lacking, the person would not be covered under the definition or expression “Land Grabbing”. In fact these vexed questions of fact and law received detailed attention in the decision reported in ***Arif Noorul Hassan v. State of A.P.,***[2] rendered by one of us (Honourable Sri Justice B.Prakash Rao on behalf of the Division Bench). After elaborate consideration of such vexed questions of fact and law, which frequently arose before the Special Court and High Court, His Lord Ship has made it clear that as long as there is any justification for the possession by the so called land grabbers against the so called persons who have been sought to be called as land grabbers is supported by any sustainable plea, document or proceedings as they would not come well within the definitive clause of land grabbers. The provisions of Section 2 (e) and (d) of the Special Act, which have to be read together, were carefully analyzed and it was made clear that the remedy is an exclusive one in a narrowed

concept with a limited jurisdiction and in a limited arena rather than roping in wider net of common law remedies. The object of the special jurisdiction was stated to be only to avoid the normal delays, which occur in regular remedies, but which cannot comprehend all the cases of trespass, encroachment, illegal occupancy or otherwise intermeddling with the properties by any persons for which, the general remedies under the common law can always take care of. In view of the authoritative pronouncement of the state of law by the Apex Court and this Court, there remains absolutely no ambiguity that a case of *bona fide* purchase and possession of the property based on the entries in the public records cannot possibly call for the application of the provisions of the Special Act on facts. Therefore, the impugned judgment under challenge in the two Writ Petitions cannot be sustained. This point is answered accordingly.

Point No.2: The consideration herein is confined to the sustainability of the action of the State against the respondents in possession under the colour of lawful title under the special jurisdiction but no part of this judgment is an expression of opinion on the rights of the State to pursue the regular remedies provided to it by law in respect of the said land, if it is within its lawful entitlement to pursue the

same against the respondents or any others. So, while leaving open such questions to be determined in such appropriate legal proceedings, these two Writ Petitions have to be allowed in the circumstances without costs.

In the result, both the Writ Petitions are allowed without costs.

(B.PRAKASH RAO, J)

(G.BHAVANI PRASAD, J)

13th September 2007
RRB

[1] (2004) 7 SCC 398
[2] 2007 (5) ALT 69 (DB)